

BOOK REVIEWS

Modern Democracies. By James Bryce. In Two Volumes. New York, The Macmillan Co., 1921. Vol. I, pp. xiv, 1-508; Vol. II, pp. vi, 1-676.

No man in the world to-day is better fitted to discuss modern democracies than Lord Bryce. His work on *The American Commonwealth*, written after the closest personal observation of our institutions, and revised and enriched from time to time by his subsequent reinvestigation, has been recognized, for many decades, as a book which every American should read, that he may know his own country, with its virtues and its faults, painted by a friendly but judicial hand.

Lord Bryce's encyclopaedic knowledge of history, shown in all his works, including his *Holy Roman Empire*, and his knowledge of the most modern conditions and changes in governments, made vivid and practical by his actual observations and continued studies made in the countries of which he writes, give him a peculiar facility for discussing the present state of modern democracies. The fate of democracy and its future usefulness as a form of government are a more compelling topic now than ever. Lord Bryce improves the present great opportunity to contrast the anticipations of those who framed the early democratic forms of government, and of the people who took part in it, with the realization of to-day.

He takes as the examples of democracies in Europe, the Republic of France and the Republic of Switzerland, and his book is a treasure of concrete, exact, and comprehensive statements of the governments of each. He does not attempt to bring his treatise beyond the War, although there are occasional references to changes in legislation since the beginning of that struggle.

He delights himself with a description of the sturdy conservative democracy of the Swiss, whose distrust of vesting too much power in any one, and whose individual sense of responsibility for their government, seem to constitute them the best material for a stable popular government. He describes the operation in their small republic of the referendum. He shows its limited use and explains the advantages and defects of its operation under favorable conditions. He does not select Great Britain in his study of modern democracies, because he feels he is too closely associated with the living government there to make it appropriate that he should deal with it.

In this hemisphere, Lord Bryce takes for his consideration Canada and the United States. His discussion of the United States is of course a supplement to his *American Commonwealth*; but it is intensely interesting, in that it is a review of conditions and of their changes in fifty years from the time when he was preparing that great work for publication. He considers two other democracies in the far Southern Seas, the Australian Federation and New Zealand, which were of British origin with strong traditions of liberty and equality, and which have been more ambitious and have gone further in social legislation and the attempt to regulate relations between employers and employees than any other country.

The author points out with great candor the faults and defects of the governments and peoples he describes, and at times one feels that his attitude is rather a pessimistic one; but after reading the whole work and weighing his summing up and conclusions, one lays the book down with a feeling that while the writer sees clearly and regrets the failures of modern democracy to approach the ideals which he has had, and to realize the anticipations of those who

projected this form of government, yet he believes that the peoples and the governments they make are getting better slowly; that democracy is probably the only form of government in which progress of a permanent character can be made. He does in one passage stir one's imagination to the possibility of a return by the great majority of peoples who shall have become indifferent to an ideal of self government, to the plan of again committing to a few capables the conduct of affairs. But he evidently does not entertain the conception as practically probable.

Lord Bryce's real optimism is revealed in the last passage of his work, which is a summary of the gratifying improvement of conditions in the United States during the last fifty years. In the last paragraph of that passage he says:

"No Englishman who remembers American politics as they were half a century ago, and who having lived in the United States, has formed an affection as well as an admiration for its people—what Englishman who lives there can do otherwise?—will fail to rejoice at the many signs that the sense of public duty has grown stronger, that the standards of public life are steadily rising, that democracy is more and more showing itself a force making for ordered progress, true to the principles of liberty and equality from which it sprang."

WILLIAM H. TAFT

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Estates, Future Interests, and Illegal Conditions and Restraints in Illinois. By Albert M. Kales. Chicago, Callaghan & Company, 1920. pp. 948.

Students of the law of Future Interests have come to look upon Mr. Kales as the heir of John Chipman Gray. No one in the country is better qualified to unravel the intricacies of remainders, executory interests, and conditions; no one certainly could bring to the task greater learning or riper experience. To praise the high qualities of the new treatise in these respects would be a work of supererogation. It will be more serviceable to point out what are believed to be some defects of the book, and it is hoped that this will be more welcome to the vigorous and combative spirit of the author than stereotyped encomium.

The book is a revision and considerable enlargement of the author's treatise on Conditional and Future Interests and Illegal Conditions and Restraints in Illinois, published in 1905.

The additions consist of the historical introduction, covering about one eighth of the book, two chapters on principles of interpretation, four chapters on estates in possession, a title on adverse possession against reversioner and remainderman, and a title upon the inclusion of adopted children in gifts,—besides much material added to the topics treated in the earlier book.

The limitation of the treatise to the law of Illinois accounts for the very meagre treatment or entire omission of subjects of great importance and interest. Thus, illegal and impossible conditions receive only four brief sections; the bearing of the limitation of successive estates on inheritance taxation is referred to only in one section (sec. 451), and a similarly inadequate treatment is accorded to the relative rights of life tenant and remainderman (sec. 399), nothing at all being said concerning the disposition of stock dividends.

Is it a sufficient reason for this neglect that these subjects have had no or only little judicial attention in Illinois? Why then have we elaborate discussions of divesting contingencies, cross limitations, determination of classes, and powers, almost exclusively on the basis of English cases? Some of these topics are of little intrinsic importance, others based upon conditions and practices peculiarly English, while the omitted topics are of the greatest practical interest. The author does not appear to have mapped out his subject upon the basis of a comprehensive survey, but to have been guided by two factors, from a systematic

point of view curiously irrelevant: the one, the arrangement of Gray's *Cases on Property* (in volume V and part of volume VI); the other, the fact that the author had happened to write periodical articles upon certain subjects; to this latter circumstance we are indebted for the chapters on adverse possession, and adopted children.

The title on adopted children suggests another observation. A large portion of the treatise is naturally given to the detailed consideration of Illinois cases. So far as these discuss or illustrate principles, they are instructive to the student of the subject in all common-law jurisdictions, especially in the light of the author's acute and discriminating comments; so far, however, as they deal simply with indifferent and petty controversies of construction, they add little even to the law of wills.

Thus a considerable amount of space is given to the question whether under a limitation to the children of a person, adopted children can take. The Supreme Court of Illinois says no. This will seem to many persons good sense; the Massachusetts statute provides so expressly, and a poorly drawn section of the Illinois adoption act points to a legislative intent in the same direction. Mr. Kales argues at length and unconvincingly the other way. After reading his argument one turns rather instinctively to the report of the Illinois case, to find, in accordance with one's expectation, that Mr. Kales was counsel for the adopted child. One cannot help wondering what the doctrine of the book would have been, had Mr. Kales been retained by the other side. The whole controversy is of the slightest interest.

The point needs to be emphasized, because Mr. Kales, above all other law writers, has insisted upon (and again does so in the preface to the book) the value of two features in teaching law: the close contact of the teacher and writer with active practice, and the concentration upon the law of one jurisdiction. The book is supposed to illustrate these advantages. If it claims to be a book merely for the use of the Illinois practitioner, all right and good; but from the point of view of the students of the law—a constituency numerically much smaller, but who alone are interested in the subject as a whole—a large portion of the book is of extremely limited value; even the Illinois student would spend his time unwisely in reading for educational purposes construction cases of the type here analyzed.

Problems of construction—apart from the opportunity they afford for the display of forensic skill—have an interest of their own, but hardly if we accept the author's theory. His chapters on interpretation are the weakest in the book; from the point of view of the general subject of the treatise they are certainly inadequate. The problems of future interests are as much problems of construction as problems of validity or of operation; but so far as they are problems of construction they have very little to do with either verbal interpretation or with questions of intent or inducement. In the typical and important cases they are problems arising out of unforeseen contingencies for which the testator made no provision, and which the words chosen either do not fit at all, or in view of which the inherent ambiguity of language affords an opportunity for the exercise of judicial power. This phase of construction the author casually recognizes (sec. 148), but does not develop. It is in these cases that it is legitimate for courts to be controlled by policy, and for a law writer to urge considerations of policy. It is only on this basis that the question of the vesting of legacies; the question: vested or contingent remainder; the questions of the determination of classes or of gifts over on contingencies that do not happen, permit of fruitful discussion.

The English courts have preferred to treat construction as governed by the authority of precedent, apparently irrespective of considerations of policy, and their decisions are therefore not merely of slight value, but have to a considerable

extent been ignored in American jurisdictions. In the American courts, construction is much less bound by authority, but no theory has been developed, and Mr. Kales is content to state the result of the Illinois decisions, confining his comments to defects of reasoning and logic. This is valuable so far as it goes, but it does not go very far.

The criticism thus offered goes to the plan of the book, not to its execution. The law of limitations, restraints, and conditions imposed upon property is one of the great fields of jurisprudence. The American law upon the subject is largely archaic, arbitrary, even unintelligible; it calls for statement in new terms, for legislative readjustments, for constructive effort in every direction which requires full command of the cases, but also a spirit of emancipation from case law. Only those who make this branch of the law their principal study can hope to master it, and to them we must look for leadership in reform. Such leadership we had a right to expect from Mr. Kales, and we are disappointed not to get it in this treatise.

It is of course a legitimate ambition to write a practitioner's handbook of the first order, and that Mr. Kales has done. He has placed the profession under great obligation; and in Illinois the treatise is sure to become a "book of authority."

ERNST FREUND

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The Law of Damages and Compensation. By F. O. Arnold. Second Edition. London, Butterworth & Co., 1919. pp. lxxxvi, 408.

That a second edition of this useful treatise has been called for so soon, in spite of the interruption of all intellectual and commercial activities caused by the war, is perhaps the best guarantee of the excellence of the work. The new edition adds a chapter dealing with the damages for infringement of copyright, patent and trade mark, a section on damages for the tort of maintenance, and also a discussion of the Workmen's Compensation Act of 1917. Other war legislation has been ignored, as being ephemeral in its nature. Important cases decided since the first edition was published have of course been incorporated in the second edition.

Though we acknowledge the difficulties of presentation of a subject which has developed in such an empirical way as has the subject of Damages, nevertheless it would seem that the author has hardly made the most out of the possibilities of consecutive logical arrangement of his subject. The usual arrangement has been followed; namely, a presentation first of general principles, so far as these have been developed, followed by a discussion of the measure of damages in particular actions. But this "general part" occupies only a little more than ten per cent of the volume, whereas in the last revision of the other standard English text, by Mayne, almost thirty per cent of the book is devoted to this phase of the subject, while in our standard American text the ratio is forty per cent of the whole. The sub-topics of this part are identical with those in Mayne; namely, measures of damages, liquidated damages or penalty, and interest.

It would seem, too, that since the subject of Damages is of comparatively modern growth more might be made of the historical development of that body of rules which has grown up since North, C. J., said that the "jury are the proper judges" of the measure of damage. If the cases are followed historically, we can observe this process of transfer from jury to court, from the facts of isolated cases to the rule of law, in course of development. The answer to this criticism may well be that the book is not designed primarily for students of law in general but rather for English practitioners. As a presentation of the

law of England and not of Anglo-American law, and of that law as it is, and not what it is coming to be or possibly ought to be, the book is well done. But for the American student of law it lacks the inspiring quality that comes from extension historically to show the development of principles and extension spatially to American applications and expansions of such principles. Such a text as this may well be considered simply a medium for presenting in clear and succinct form the decisions of the courts of the jurisdiction in which it is published. But if it is intended for students of law, there seems to be a demand for something more than a glorified digest of the cases, something akin to the lectures of a teacher handling cases before his classes. This treatise performs the first of these functions most admirably; if however the true aim of such a work is the second mentioned, then it leaves something to be desired. It is apparently an English barrister's book prepared for those of like attainments.

JOSEPH H. DRAKE

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The United States of America: A Study in International Organization. By James Brown Scott. New York, Oxford University Press, 1920. pp. xix, 605.

This volume is apparently the result of the labors of the learned and indefatigable Dr. Scott, Director of the Carnegie Endowment for International Peace. We say "apparently" because under modern methods of the fabrication and the quantity production of law books, it is not always easy to tell in a given case how much is the work of the author and how much the work of obscure clerks.

We are informed in the preface that it is the object of the author to state within the limits of a volume some of the international problems met and solved by the framers of the United States Constitution of 1787 in the belief that the experience of the American States is of value in any attempt to strengthen the union of the independent states of the world called the Society of Nations. We have thus paraphrased in simple construction the cumbersome sentence found at the close of the preface. We leave it to the learned reader to connect the "international problems met and solved" with the "experience of the American States."

Although we have no clear indication of the general subdivisions of the treatise, it appears, upon examination, that Chapters I to VI discuss the Colonial charters and the various movements toward a union of the several States prior to the Federal Constitution of 1787, Chapter III being especially devoted to the Articles of Confederation; Chapters VII to XVI discuss the proceedings in the Federal Convention of 1787, and refer at length to some of the various plans proposed for a Federal union; Chapters XVII, XVIII, and XIX are devoted to the nature of judicial power, with special attention stressed on the distinction between political and judicial power; Chapters XX, XXI, and XXII refer to the cases illustrating the extent and nature of the jurisdiction of the Supreme Court of the United States; and in Chapter XXIII, we find a re-statement at greater length of the purpose of the book as set forth in the preface.

While the title leaves us in doubt as to whether the subject matter is the formation of the United States Constitution as an object lesson in international organization, or whether it is the operation of that Constitution, it seems reasonably clear on examination that the former is the general topic, and that there is little said about the operation except in reference to the judicial power of the Supreme Court. This is a matter of some regret. The history of the

formation of the Constitution has already been well discussed, but little has been written about the operation and effect of the Constitution as an international organization. It is doubtful if an elaborate discussion of the procedure followed in adopting the Federal Constitution will be of any use at any meeting of delegates from the states of Europe. Dr. Scott would have done better service if he had said less about the debates and views of the several members, and more about the particular clauses of the Constitution which have had such a beneficial effect in promoting peace among the several states.

Some of the most important clauses of the Federal Constitution in this connection are as follows: Article I, Sections 8, 9, and 10; Article IV, section 2; and the Fourteenth Amendment. It would be difficult indeed to pick out any provisions more important in furthering the peaceful union between the several states of the United States, and yet we have not been able to find a reference to any of them.

Each chapter is preceded by quotations, the relevancy of some of which are open to question. If the inquiry is, as it appears to be, into facts occurring a century ago, the pertinency of recent comments seems doubtful. For instance, preceding the chapter on the Federal Convention, we have, on pages 142 and 143, the instructions of the United States Government to its delegates to the Hague Conference of 1899.

The book suffers from diffuseness, too great emphasis of the obvious, and introduction of the trivial. Thus, on page 147, the learned author, in mentioning the tardiness in the arrival of the delegates to the convention of 1787, says the Virginia delegation arrived "at Philadelphia on time, where they were met by the Pennsylvania delegates *who would have found it difficult to be elsewhere.*" The clause in italics is not only trivial but a plain *non sequitur*, as the Pennsylvania delegates could easily have been elsewhere if business or convenience demanded. On page 153 we find this sentence in reference to the organization of the Constitutional Convention of 1787: "To act in an expeditious and orderly manner and to accomplish the purpose for which it was called, it was necessary to have a system of rules and procedure." The necessity for rules is too obvious to justify such an extended comment. On page 346, in discussing the procedure in an English case referred to, the following statement appears: "This was upon what is called an information in the nature of a *quo warranto*." This statement raises a doubt whether the writ in question is *quo warranto*, which doubt seems never to have existed in the mind of any lawyer. Whenever a decided case is referred to, the date of the decision is indicated by the cumbersome phrase "Decided in 1859," instead of the usual method of inserting the date in brackets.

We have gathered here a large number of historical precedents, some of them not elsewhere easily accessible. As a compilation, the book is undoubtedly useful, but we fail to find that original thought and keen analysis which might be expected from so great an authority on International Law.

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The Employment of the Plebiscite in the Determination of Sovereignty. By Johannes Mattern. Baltimore, The Johns Hopkins Press, 1920. pp. ix, 214.

Mr. Mattern begins his study by examining the so-called popular votes of Greece and Rome, and then gives a discussion of the rudiments of the idea of self-determination in matters of allegiance as shown in the feudal system in France. Like all the other writers on the subject, however, he begins the history of the plebiscite in questions of sovereignty with those of the French Revolution.

In the case of these Revolutionary plebiscites Mr. Mattern has gone to the

only source available, the *archives parlementaires*, as well as to the secondary material. It is to be regretted that in his accounts of the Italian plebiscites of 1848, '59 and '60, the votes in Savoy and Nice, Venetia, Rome, Moldavia and Wallachia, the Danish West Indies, and Norway he has been content with the secondary sources only. The result is certainly that sometimes interesting and valuable information is not presented. In the case of Italy, for instance, there is a wealth of material on the Italian plebiscites in the various publications of official documents by the Italian government and especially in the excellent collection *Le assemblee del risorgimento, atti raccolti etc.* published in 1911. The British Parliamentary Papers and Cavour's letters also yield an enormous amount of information. From these sources may be had the documents containing the actual regulations under which the plebiscites were taken, as well as the official results. The Parliamentary Papers and Cavour's letters also disclose the diplomatic drama behind. From them one learns that it was actually Lord John Russell who in 1859 proposed the method of the ballot for the purpose of unifying northern Italy, a method adopted by Cavour as the best means of forcing Napoleon's hand. The result of these votes was, of course, never in doubt. Nevertheless they were far from "decorative" as Stoerk calls them.

It would also be helpful to have a more detailed account of the actual conditions under which these and the other plebiscites were taken. The method of voting, whether by acclamation, by registers, or by ballot, is a matter of importance, and it lends color to what must needs be a somewhat dull narrative.

Mr. Mattern is the first of the writers on self-determination to include the votes for secession of the Confederate States of America. Of these he gives a careful and interesting account. He is also the first to include the cessions under the treaty of Versailles. In Chapter VI he summarizes the cases of cession with and without the plebiscite, contained in the treaty, and gives an account of the German protests and the Allied answers concerning them.

In discussing the practical aspects of the plebiscite Mr. Mattern concludes that to be of value the vote must be nearly unanimous. In his discussion of the plebiscite in international and constitutional law he points out that the principle of popular sovereignty has come to be recognized almost universally in matters of constitutional law and that it may gradually encroach on the international field. The chief opposition to the plebiscite arises, as he explains, from the fear that the recognition of the right of the inhabitants to be consulted on a question of transfer may imply the recognition of the right of secession and therefore constitute a threat against the safety of the State. He concludes with the statement that if the plebiscite does come to be established in international law, conquest will be rendered unprofitable and plebiscites unnecessary.

Notwithstanding the fact that the doctrine of self-determination has been in existence for over a century there are as yet few books to which one can turn for a history of the theory or of the several plebiscites which have been held. Most of the published material represents the desire of an author to promote or to prevent the taking of a vote in a specific territory. The whole subject has always been as it is now a most contentious one. For this reason this addition to the unbiased literature is welcome.

SARAH WAMBAUGH

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Government War Contracts. By John Franklin Crowell. Preliminary Economic Studies of the War, No. 25. Published by the Carnegie Endowment for International Peace. New York, Oxford University Press, 1920. pp. xiv, 357.

Even the most casual reader of this book must be impressed at once with the serious purpose which actuated the author, for no one, not even an economist,

would undertake the painstaking examination of so many government documents except in the hope of discovering there a basis for conclusions which will be helpful in the ordering of our national life. Mr. Crowell, in making his researches and writing this book, has rendered a valuable service, for he has made clear how great a problem was involved in this country's war contracts; and by his analysis of the whole subject he has shown for each governmental division involved what were the pre-war conditions and methods, the violence and magnitude of the sudden expansion occasioned by the war, the particulars in which bureaucratic isolation (the old method) failed, and the entire series of steps by which conditions were so improved that on the day of the armistice nearly all the bureaus of the Government were proceeding in a sane and workmanlike manner, adequate legislation having been passed under which it became possible to do business speedily, in large volume, yet without injustice, and with such economy as could obtain under the existing emergency.

Such a book could not be written earnestly without containing some criticism. Mr. Crowell, in criticising, has succeeded in avoiding personalities which would be meaningless; has stuck to general principles; and, except for an occasional repetition, has presented his subject in a direct and logical fashion. He forces the reader to the conclusion that in spite of occasional instances of the paying of exorbitant prices, no such waste existed as has seemed to the popular imagination to be the case. Even the "cost plus" contracts for the construction of cantonments, etc., paid no exorbitant commissions to the contractors; and this method really saved months for the government.

The problem of demobilizing industry from a war to a peace basis is clearly explained, and the reader is convinced that this large problem was well handled; that most contractors were fairly dealt with, though individual cases of hardship may have existed.

Mr. Crowell's book, while it contains no formulation of a future policy in government contracting and purchasing, makes it evident that the possibility exists for co-ordinating these functions for all branches of the Government, not only for war service or other emergencies, but in times of peace. If such a co-ordination should be accomplished, Mr. Crowell will have rendered a conspicuous service to the entire nation, for we shall have a smoothly functioning organization operating under peace conditions which would be capable of expansion at short notice to handle the largest emergency with almost equal efficiency.

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